

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Comcast Cable Communications, LLC)	
)	CSR 8191-E
Petition for Determination of Effective)	
Competition in 33 Scranton, Pennsylvania-area)	
Franchise Areas)	

MEMORANDUM OPINION AND ORDER

Adopted: June 3, 2010

Released: June 4, 2010

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC, hereinafter referred to as “Petitioner,” has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(2), 76.905(b)(1) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.” Petitioner alleges that its cable system serving the communities listed on Attachment B and hereinafter referred to as Group B Communities is subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended (“Communications Act”)¹ and the Commission’s implementing rules,² and is therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. (“DirecTV”), and Dish Network (“Dish”). Petitioner additionally claims to be exempt from cable rate regulation in the Community listed on Attachment C and hereinafter referred to as the Group C Community because the Petitioner serves fewer than 30 percent of the households in the franchise area. The petition is unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵ For the reasons set forth below, we grant the petition based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

¹See 47 U.S.C. § 543(a)(1).

²47 C.F.R. § 76.905(b)(2) and 47 C.F.R. § 76.905(b)(1).

³47 C.F.R. § 76.906.

⁴See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

⁵See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

A. The Competing Provider Test

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area;⁶ this test is otherwise referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.⁷

5. Turning to the first prong of this test, it is undisputed that the Group B Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.⁸ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.⁹ We further find that Petitioner has provided sufficient evidence to support its assertion that potential customers in the Group B Communities are reasonably aware that they may purchase the service of these MVPD providers.¹⁰ The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming¹¹ and is supported in this petition with copies of channel lineups for both DIRECTV and Dish.¹² Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Group B Communities because of their national satellite footprint.¹³ Accordingly, we find that the first prong of the competing provider test is satisfied.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioner asserts that it is the largest MVPD in all but one of the Group B Communities.¹⁴

⁶47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁷47 C.F.R. § 76.905(b)(2)(i).

⁸*See* Petition at 3.

⁹*Mediacom Illinois LLC et al., Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd 1175 (2006).

¹⁰47 C.F.R. § 76.905(e)(2).

¹¹*See* 47 C.F.R. § 76.905(g). *See also* Petition at 4-5.

¹²*See* Petition at Exhibit 2.

¹³*See* Petition at 3.

¹⁴*Id.* at 7. Comcast states that it is the largest in 31 of the 32 Franchise Areas that qualify under the competing provider test. In Clinton, the remaining Franchise Area that it asserts qualifies under this test, Comcast states that both Comcast and the DBS providers each serve more than 15 percent of all households. The Commission has recognized previously that where “the subscriber penetration for both [the cable operator] and the aggregate DBS
(continued....)

Petitioner sought to determine the competing provider penetration in the Group B Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association that identified the number of subscribers attributable to the DBS providers within the Group B Communities on a zip code plus four basis.¹⁵

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁶ as reflected in Attachment B, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Group B Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Group B Communities.

8. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Group B Communities.

B. The Low Penetration Test

9. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area; this test is otherwise referred to as the “low penetration” test.¹⁷ Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the franchise area.

10. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment C, we find that Petitioner has demonstrated the percentage of households subscribing to its cable service is less than 30 percent of the households in the Group C Community. Therefore, the low penetration test is also satisfied as to the Group C Community.

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information each exceed 15 percent in the franchise area, the second prong of the competing provider test is satisfied.” *Charter Communications – Seven Local Franchise Areas in Missouri*, 21 FCC Rcd 1208, 1210 ¶ 5 (2006).

¹⁵Petition at 5-7.

¹⁶Petition at 7, Exhibit 7.

¹⁷47 U.S.C. § 543(l)(1)(A).

III. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC **IS GRANTED**.

12. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Senior Deputy Chief, Policy Division, Media Bureau

¹⁸47 C.F.R. § 0.283.

ATTACHMENT A

CSR 8191-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUIDs
Abington	PA1119
Archbald	PA1117
Avoca	PA1188
Blakely	PA1118
Clinton	PA2010
Dallas	PA0886
Dickson City	PA1259
Dunmore	PA1185
Dupont	PA1159
Duryea	PA1150
Edwardsville	PA1134
Forty Fort	PA1135
Glenburn	PA1122
Jefferson	PA3024
Jenkins	PA1151
Jessup	PA1065
Luzerne	PA1138
Nanticoke	PA1189
Newton	PA1011
North Abington	PA2481
Olyphant	PA1148
Pittston	PA1129
Plains	PA1136
Plymouth	PA1191
Ransom	PA3025
Scranton	PA0830
Swoyersville	PA1234
Taylor	PA1186
Throop	PA1306
West Pittston	PA1130
West Wyoming	PA1137
Wyoming	PA1093
Yatesville	PA1361

ATTACHMENT B

CSR 8191-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUIDs	CPR*	2000 Census Households	Estimated DBS Subscribers
Abington	PA1119	17.73%	609	108
Archbald	PA1117	29.92%	2,470	739
Avoca	PA1188	23.53%	1,177	277
Blakely	PA1118	28.56%	2,843	812
Clinton	PA2010	34.19%	465	159
Dallas	PA0886	25.64%	2,917	748
Dickson City	PA1259	25.00%	2,692	673
Dunmore	PA1185	22.02%	6,141	1,352
Dupont	PA1159	26.14%	1,228	321
Duryea	PA1150	30.14%	1,984	598
Edwardsville	PA1134	18.68%	2,345	438
Forty Fort	PA1135	26.65%	1,989	530
Glenburn	PA1122	26.11%	471	123
Jenkins	PA1151	25.89%	1,715	444
Jessup	PA1065	30.31%	1,976	599
Luzerne	PA1138	24.33%	1,410	343
Nanticoke	PA1189	26.25%	4,850	1,273
Newton	PA1011	46.14%	919	424
North Abington	PA2481	17.44%	258	45
Olyphant	PA1148	29.31%	2,197	644
Pittston	PA1129	23.77%	3,530	839
Plains	PA1136	23.49%	4,556	1,070
Plymouth	PA1191	23.55%	2,794	658
Ransom	PA3025	37.27%	542	202

Communities	CUIDs	CPR*	2000 Census Households	Estimated DBS Subscribers
Scranton	PA0830	20.32%	30,069	6,111
Swoyersville	PA1234	28.71%	2,243	644
Taylor	PA1186	25.35%	2,678	679
Throop	PA1306	26.16%	1,709	447
West Pittston	PA1130	27.55%	2,243	618
West Wyoming	PA1137	31.11%	1,183	368
Wyoming	PA1093	21.39%	1,487	318
Yatesville	PA1361	32.62%	233	76

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT C

CSR 8191-E

COMMUNITY SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID	Franchise Area Households	Cable Subscribers	Penetration Percentage
Jefferson	PA3024	1,321	102	7.72%